THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 7348 of 2007

DATED: 09 -10-2007

Between:-

Smt. Munevar Sultana.

…PETITIONER

And

South Central Railway, represented by its General Manager, Rail Nilayam, Secunderabad.

..RESPONDENT

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 7348 of 2007

O R D E R

Heard Sri R. Chandrashekar Reddy, learned counsel representing the writ-petitioner and Sri P. Gangarami Reddy, learned counsel representing the respondent.

2. The principal question, which had been argued in elaboration, is relating to the maintainability of the writ petition.

3. Learned counsel for the writ-petitioner contending that in the light of the facts and circumstances since the interference is unauthorized, the writ-petitioner is entitled to protect her right by virtue of Article 300-A of the Constitution of India and hence till then the possession not to be disturbed.

4. On the contrary, the learned counsel for the respondent, otherwise, contending that in as much as disputed questions of title being involved the Civil Court alone is competent to go into such questions and in that view of the matter, the writ petition cannot be maintained.

5. The writ-petitioner filed the present writ petition for a writ of Mandamus declaring the action of the respondent in enclosing her property bearing Municipal No. 2-5-55/27/1, constructed on Plot

NO.27, admeasuring 400 sq. yards (80 x 45 sq. feet) or 334.45 sq. mtrs., in Survey Nos 177 and 178, situated at Cherlapally village, Hyderabad East, presently Ranga Reddy District is highly arbitrary and without jurisdiction and consequently directing the respondent not to dispossess the petitioner without following due process of law and pass such other appropriate order.

6. The case of the writ-petitioner is that inasmuch as there is illegal and unauthorized interference by the officials of the respondent in respect of her self-acquired property, the subject matter of the writ petitioner, bearing Municipal No.2-5-55/27/1, constructed on Plot No.27 admeasuring 400 sq. yards (80 x 45 sq. ft.) or 334.45 sq. mtrs. In Survey Nos. 177 and 178, situated at Cherlapally village, Hyderabad East, presently Ranga Reddy District, the present writ petition had been filed. It is stated that the petitioner had purchased Plot No. 27, admeasuring 400 sq. yards (80 x 45 sq. ft.) or 334.45 sq. mtrs in survey Nos. 177 and 178 situated at Cherlapally village, Hyderabad East, present Ranga Reddy District through registered sale deed dated 24-01-1987 and ever since she is in possession and enjoyment of the same and subsequently for protecting the said plot from encroachments, she had constructed a room and also enclosed it with compound wall. It is also stated that the property of the petitioner is being assessed to tax by Kapra Municipality, Ranga Reddy District and she has been paying taxes as and when she was called upon and that her sale deed was registered as Document No. 849/1987 in Book

1, Volume 525 and at pages 173 to 175 in the office of SRO, Uppal. It is further stated that the vendor of the petitioner in turn had purchased through a sale deed dated 26-04-1967 from Sri Elenti Ramaiah and his family members through registered document bearing No. 1455/1967 of Book 1, Volume 69, pages 89 to 91. It is further stated that while matter stood thus, the officials of the respondent started constructing a compound wall around the plot of the petitioner including other plots to enclose the same on account of which she would not be having an access for ingress and egress and because of such high handed acts of the officials of the respondent, she would be dispossessed from the property which she had purchased through the registered sale deed and that when she enquired from the officials of respondent, who are making illegal constructions, as to how they could make attempts to enclose her plot and the other plots by constructing a compound wall, the workers attending to such constructed had stated that they have instructions from the respondent for enclosing the entire area by a compound wall including her property. It is also stated that the phogoraphs are filed and hence the illegal and unauthorized interference has been questioned in the present writ petition.

6. In the counter affidavit filed by the respondent which was sworn to by the Divisional Engineer, South Central Railway, Secunderabad, it is stated that the land measuring 30 acres falling under survey No. 183 (part), situated in Cherlapalli village, Ghatkesar Mandal, Ranga Reddy District belongs to the A.P. Industrial Infracture Corporation Ltd (APIIC), and it transferred the above land by way of sale to South

Central Railway for valuable consideration and delivered possession thereof to the respondent free from all encumbrances vide SCR Letter No. E/555/M-1 dated 3-06-1981. It is further stated that BPCL and IBP are jointly purchased the above land by virtue of the registered sale deed bearing document No. 2911 of 1994 dated 22-4-2004, to facilitate the construction and operation of joint private siding for smooth handing and operation of loading/unloading activities of POL products to and fro the POL terminals owned by them at the said location and that after careful examination of the site and feasibility, it was formed that the land owned by the South Central Railway was found to be more suitable for the said purpose and in view of the same, the BPCL and IBP have approached the South Central Railway authorities for exchange of land and SCR and BPCL, IBP agreed to the proposed exchange and entered into a deed of exchange and in pursuance of the said exchange deed, the South Central Railway became the owner of the schedule land. It is further stated that after conducting joint survey by APIIC, IBP, BPCL revenue authorities with Railway officials, the boundaries to the land covered by 176, 177, 178, 179, 180 and 183 have been fixed and the petitioner is nothing to do with the land in survey Nos. 177 and 178 and that the South Central Railway has not encroached any other land and constructing the compound wall within the boundaries fixed by the revenue authorities. It is further stated that the plot No.27 admeasuring 400 sq. yards claimed by the petitioner is in survey Nos. 177 and 178 which belongs to the respondent. Hence,

it is prayed for dismissal of the writ petition with costs.

7. In the light of the respective stands taken by the parties, the writ-petitioner is asserting title to the property and on the contra, the respondent is denying the same. It is no doubt true that possession of the writ-petitioner in relation to the property in question cannot be disturbed unauthorisedly. But, however, when there is assertion of title by the writ-petitioner and denial by the respondent, it being a dispute relating to the question of title, the same cannot be gone into in a writ petition. The appropriate remedy, if any, available to the writ-petitioner is to approach the competent Civil Court praying for appropriate reliefs.

In the light of the same, liberty is given to the petitioner to invoke appropriate remedies in accordance with law.

8. With the above observation, the writ petition shall stand dismissed. No order as to costs.

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P.S.NARAYANA,J

Dated: -10-2007
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